**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 50 OF 1993**

The State of Maharashtra ..Appellant

versus

Shri Mahadeo Vittu Khatate ..Respondent

Mr. B. R. Patil G.P. for the Appellant.

Mrs. S. A. Mudbidri for the Respondent.

**CORAM : D. G. DESHPANDE,J.**

**DATE : 11TH JANUARY,2004.**

**ORAL ORDER :**

1. Heard Mr. Patil for the Appellant - State and Mrs. S.A. Mudbidri for the Respondent - Claimant.

2. By this Appeal the State has challenged the Judgment and Order of the Civil Judge, Senior Division, Ratnagiri, dated 2.5.1991 by which the claimant was granted enhanced compensation at the rate of Rs.900/= per Are in addition to the previous compensation awarded by the Collector coupled with solatium and interest etc. The S.L.A.O. had granted to the claimant Rs.600/- per Are. The courts granted Rs.900/- per Are in addition.

Therefore the claimant received Rs.1,500/- per Are, and it is this order that is challenged by the State.

3. This Appeal has been decided only on the points which were urged before me.

4. Firstly, it was contended by Mr. Patil that Article ’C’ which is a zerox copy of a certificate produced by P.W. 2 Keshav was not at all exhibited and therefore it could not have been taken into consideration. He also contended that witness Keshav did not produce either the original sale deed or certified copy thereof and as such there was no evidence regarding the sale transaction evidenced by Article "C".

5. It is true that the witness Keshav P.W. 2 has tendered a zerox copy of certified copy and therefore during his deposition, it was taken on record as Article "C". However, perusal of the original record and proceedings before me show that while submitting the said document in court, notice was given to the State to admit or deny the said document and the say of the Government Pleader who was appearing for the State in that case before the court, was obtained. Learned Government Pleader noted on the application Exhibit ’11’ as under:

"May be admitted, however the contents of the documents are not admitted". If this was the end of the matter then no objection of Mr. Patil, would have been required to be considered. However, there is one application Exhibit ’19’ in which it has been stated that certified copy of Index II has been filed in Reference No. 8 of 1991 and therefore the claimant was unable to file the said certified copy in the present Land Reference No. 6 of 1991. He sought permission of the court to produce zerox copy. It appears from the record that evidence of Keshav P.W. 2 was recorded on 30.4.1991 and therefore it is clear that permission to produce zerox copy was obtained from the court one month before i.e. 30.3.1991. It is also clear from the aforesaid application Exhibit ’19’ that certified copy was filed in some other Reference and after the permission of the court, zerox copy came to be filed, which was taken on record as Article ’C’. In the circumstances therefore it has to be held that document Article "C" has been properly proved and therefore the objection of Mr. Patil about Keshav on the basis of Article "C" has to be rejected.

6. Mr. Patil, however contended that the Land under Acquisition in the present case was non agricultural land and therefore the rate granted at Rs.1,500/= per Are i.e. by way of adding Rs.900/-

per Are to the original awarded compensation of Rs.600/- per Are is on higher scale. However, the sale transaction evidenced by Article "C" was in respect of non agricultural land and the rate was Rs.3000/- per Acre. It is clear that the lower court has given due consideration to this important aspect and has not awarded Rs.3,000/= per Are to the claimant but has awarded Rs.1,500/= per Are.

7. Thirdly, it was contended by Mr. Patil that at any rate the State is entitled for development expenses. He relied upon **unreported Judgment of Division Bench of this Court dated 3.7.2001 in First Appeal No. 758 of 1988 The Indian Standard Metal Co. Ltd. vs. The Special Land Acquisition Officer**, whereby gave 20% as development charges and deducted the amount from the compensation awarded. Paragraph 9 of the said Judgment, which is relevant reads as follows:

> "9. This aspect takes us to the question of deduction for the purpose of development to be made from the compensation to be awarded. The learned Counsel for the claimants vehemently urged that no deduction was necessary for development in this case in view of the fact that there is sufficient evidence to show that it was homogenous

> plain strata of land requiring no development at all. In support of his submission, the learned counsel for the claimants sought to place reliance on the ruling in the case of **Bhagwathula Samanna & Ors. Vs. Special Tahsildar and Land Acquisition Officer, reported in AIR 1972 SCC 2298;** wherein it was held that in a case of acquisition of large track of land for housing purpose deduction for development purpose was not warranted when the land was already developed and had roads, drainage, electricity communication in the vicinity."

8. As against this, learned counsel for the respondent - claimant urged that when court has already taken into consideration the fact that the land was non agricultural land and has awarded only Rs.1,500/= per Are then there was no further question of deducting the development charges. This submission cannot be accepted because the Division Bench has after fixing the compensation in the aforesaid case at Rs.12.50 per sq. meter has deducted the development charges therefrom at 20% of the enhanced compensation. In the present case 20% of the development charges on the amount of compensation at Rs.1,500/= per Are comes to Rs.300/=

and therefore following the judgment of the Division Bench in the aforesaid First Appeal No. 758 of 1988, the submissions of Mr. Patil are required to be accepted, I therefore pass the following order.

**ORDER**

The appeal is partly allowed. The claimant will be entitled to enhance compensation of Rs.600/= in addition to the previous compensation awarded by the Collector. It is clarified that the claimant will thus be entitled to Rs.1,200/- per Are in addition to whatever solatium and interest that has been granted by the trial court. Appeal is disposed of accordingly. Certified copy expedited.

11.1.2005 (D. G. DESHPANDE,J.)